

**Letter of Findings: 65-20210212
Indiana Overweight Proposed Assessment
For the Year 2021**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department did not agree that Indiana Motor Carrier established that the imposition of a \$5,000 oversize/overweight penalty was entirely unwarranted; however, the Department agreed that there were mitigating circumstances justifying the reduction of the \$5,000 penalty.

ISSUE

I. Motor Vehicles - Oversize/Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-6-11; IC § 9-20-18-14.5; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of an oversize/overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state trucking company which hauls its customers' rock, sand, gravel, dirt, patch asphalt, grain, equipment, and other general commodities. Publicly available information indicates that Taxpayer operates 42 "power units" and employs 34 drivers.

Taxpayer's vehicles routinely transport its customers' loads on intrastate and interstate highways both within Indiana and outside Indiana.

In February 2021, Taxpayer had occasion to operate one of its vehicles on an interstate highway. In doing so, Taxpayer's vehicle was carrying a load of wood chips and was stopped by the Indiana State Police while traveling on interstate highway 64. The vehicle and its load were found to weigh 85,800 pounds which was 5,800 pounds over the weight allowed. Taxpayer did not possess a permit to transport an oversized or overweight load.

The Indiana Department of Revenue (Department) issued a \$5,000 "civil penalty" which the Department, in its notice and proposed assessment sent Taxpayer, described as "the maximum civil amount that may be imposed by Indiana law"

Taxpayer disagreed with the proposed penalty assessment and submitted a protest to that effect. In his protest submission, Taxpayer explained that it believed it was being penalized twice (the local penalty and the state's oversize/overweight penalty) and that "this load should be treated the same as hauling grain from a farm or rock from a quarry." Taxpayer concludes the vehicle was carrying a load that was "not a true OS/OW load which we would have had permitted."

An administrative telephone hearing was scheduled, but Taxpayer's representative chose not to participate. This Letter of Findings results and is based on Taxpayer's protest letter and the documentation within the Department's protest file.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Taxpayer argues that, as noted above, the \$5,000 penalty was excessive and unwarranted under the circumstances.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-6-11(b), "[a] person may not violate the terms or conditions of a special permit."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty" According to IC § 9-20-18-14.5(b), the Department may also subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." These listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop. In other words, the \$5,000 penalty at issue is *over and above any other penalty paid to the local jurisdiction*.

Although this is not the first penalty issued to the Taxpayer, the Department is not unsympathetic to Taxpayer's business concerns and the circumstances surrounding the incident. The Department notes that vendor that loaded the wood chips did not have facilities to weigh Taxpayer's vehicle at the outset of the trip. It was the vendor who loaded this bulk load of chips unto Taxpayer's trailer and that this type of load is particularly susceptible to weight variances; a full load of dry wood chips weighs substantially less than an equally full load of wet mulch while a load of wood chips which has sat unprotected in the vendors' yard during a rainstorm weighs even more.

The Department notes that, first, Taxpayer is required to have a permit for carrying loads that exceed statutory limits at the time of transport. This allows the Department to provide Taxpayer a route safe for transport. In this case, however, Taxpayer believed that their vehicle was under the statutory weight limit. Taxpayer did not have a permit on their vehicle at the time of the traffic stop, and therefore was correctly assessed a No Permit Civil Penalty. Moreover, Taxpayer would not have required a permit for travel if its vehicle were not on an interstate highway, because the load was less than 10[percent] over the statutory weight limit. IC § 9-20-4-2.

The Department does not agree that the load Taxpayer was carrying was not a "true OS/OW load." The numbers are what the numbers are; Taxpayer's vehicle was over the weight limit by 5,800 pounds - a not insubstantial sum slightly less than three tons.

However, in addition to providing Taxpayer an opportunity to protest, IC § 9-20-18-14.5 provides "not more than" language to the Department when generating a proposed assessment amount. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized under the Department's statutory discretion and this Letter of Findings.

FINDING

Taxpayer's protest is sustained in part and denied in part.

August 11, 2021

Posted: 11/24/2021 by Legislative Services Agency

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